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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 UNITED STATES OF AMERICA,  
12 Plaintiff,  
13 v.  
14 ARMANDO VILLAREAL-HEREDIA  
15 (1),  
16 Defendant.

Case No.: 10cr3044 WQH

**ORDER**

17 HAYES, Judge,  
18

19 The matter before the Court is the motion for compassionate release and other  
20 equitable relief in the nature of a motion to reopen final judgment pursuant to Federal Rule  
21 of Civil Procedure Rule 60(b)(6) (ECF No. 2484) filed by the Defendant.

22 **FACTS**

23 On December 17, 2013, the Court entered judgment imposing a term of  
24 imprisonment of 360 months for conspiracy to conduct enterprise affairs through a pattern  
25 of racketeering activity in violation of 18 U.S.C. § 1962(c) and a term of imprisonment of  
26 360 months for the narcotics distribution with the counts to be served concurrently. (ECF  
27 No. 2069).  
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1 On December 28, 2015, the Court entered an Order denying Defendant's habeas  
 2 claims, as well as his request for resentencing under Amendment 782 to the United States  
 3 Sentencing Guidelines. Defendant appealed the denial of his request for a sentence  
 4 reduction under 18 U.S.C. § 3582(c)(2). The Court of Appeals for the Ninth Circuit  
 5 remanded, directing the district court to "reconsider its quantity determination in light of  
 6 *United States v. Mercado-Moreno*, 869 F.3d 942 (9th Cir. 2017), which was decided after  
 7 the district court's decision [to deny Defendant's motion for a sentence reduction]." ECF  
 8 No. 2396 at 3.

9 On August 7, 2018, the Court entered an order denying the motion for a two-level  
 10 sentence reduction under 18 U.S.C. § 3582(c)(2). The Court determined that Defendant  
 11 Heredia was not eligible for a sentence reduction under 18 U.S.C. § 3582(c)(2) based on  
 12 admissions in the plea agreement, and the uncontested facts in the PSR. The Court stated:

13 Having fully considered the facts admitted by the Defendant in the Plea  
 14 Agreement and the uncontested fact in the Presentence Report, the  
 15 Court makes the supplemental finding that Defendant exercised direct  
 16 control and supervision over the entirety of the drug distribution of the  
 17 RICO conspiracy and narcotics distribution conspiracy charged by the  
 18 grand jury in this case and that the Defendant was responsible for more  
 19 than 45 kilograms of methamphetamine mixture. The stipulated facts  
 20 in the plea agreement state that Defendant was the "an organizer and  
 21 leader" in a conspiracy involving more than five participants and the  
 22 uncontested facts in the pre sentence report established that "[d]uring  
 23 the course of the investigation, agents seized at least 100 pounds of  
 24 methamphetamine, 2,765 pounds of cocaine, 40,300 pounds of  
 25 marijuana and more than one dozen firearms." (ECF No. 2014 at 7;  
 26 ECF No. 2048 at 9). This is relevant conduct that must be considered  
 27 in determining whether Defendant is eligible for a sentencing reduction  
 28 in light of Amendment 782. The Court finds that Defendant personally  
 "counseled, commanded, induced, procured, or willfully caused" the  
 distribution of more than 45 kilograms of methamphetamine mixture  
 during the course of the conspiracy. U.S.S.G. § 1B1.3, cmt. n.2 (2014).

ECF No. 2420 at 5-6. The Order was affirmed on appellate review. ECF No. 2437.

On July 30, 2020, Defendant filed a motion for compassionate release under 18 U.S.C. §3582(c)(1)(A) requesting that this Court reopen his prior habeas proceedings and modify his sentence. Defendant asserts that the COVID-19 pandemic presents a compelling reason to reduce his sentence in light of his issues with hypertension and heart disease. Defendant further requests that the Court reopen the prior habeas proceedings seeking the two level sentence reduction under Amendment 782. Defendant contends that he has no violence in his criminal history and presents no threat to the safety of the community. Plaintiff United States contends that Defendant has failed to present any extraordinary and compelling reasons warranting a sentence reduction. Plaintiff United States further asserts that §3553(a) factors weigh against Defendant's release based upon the seriousness of his offense.

### **RULING OF THE COURT**

18 U.S.C. § 3582(c)(1)(A) provides:

The court may not modify a term of imprisonment once it has been imposed except that--

(1) in any case--

(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that--

(i) extraordinary and compelling reasons warrant such a reduction; or  
(ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g);

1 and that such a reduction is consistent with applicable policy statements  
2 issued by the Sentencing Commission;

3 18 U.S.C. § 3582(c)(1)(A).

4 Section 1B1.13 of the Sentencing Guidelines, adopted before the First  
5 Step Act, addressing a motion for sentence reduction by the Director of the  
6 Board of Prisons under 18 U.S.C. § 3582(c)(1)(A) states in relevant part:

7 Upon motion of the Director of the Bureau of Prisons under 18 U.S.C.  
8 § 3582(c)(1)(A), the court may reduce a term of imprisonment (and  
9 may impose a term of supervised release with or without conditions that  
10 does not exceed the unserved portion of the original term of  
11 imprisonment) if, after consideration of the factors set forth in 18  
12 U.S.C. § 3553(a), to the extent that they are applicable, the court  
13 determines that—

14 (1)(A) Extraordinary and compelling reasons warrant the reduction. . .

15 (2) The defendant is not a danger to the safety of any other person or to  
16 the community, as provided in 18 U.S.C. § 3142(g); and

17 (3) The reduction is consistent with this policy statement.

18 U.S.S.G. § 1B1.13. The commentary to § 1B1.13 lists four circumstances that qualify as  
19 “extraordinary and compelling reasons”: (A) medical condition of the defendant; (B) age  
20 of the defendant; (C) family circumstances; and (D) “Other reasons—As determined by  
21 the Director of the Bureau of Prisons, there exists in the defendant’s case an extraordinary  
22 and compelling reason other than, or in combination with, the reasons described in  
23 subdivisions (A) through (C).” U.S.S.G. § 1B1.13 n.1. The Sentencing Guideline  
24 provisions were not amended after the enactment of the First Step Act and apply only to a  
25 motion for sentence reduction by the Director of the Bureau of Prisons. This Court takes  
26 these sentencing guideline provisions into account in determining whether a reduction is  
27 consistent with applicable policy statements issued by the Sentencing Commission.  
28 However, the Court finds that these provisions are not a limitation upon the Court’s ability  
to determine whether a defendant has presented extraordinary and compelling reasons for  
a sentence reduction under 18 U.S.C. § 3582(c)(1)(A).

1 In this case, Defendant was sentenced to 360 months in the custody of the Bureau of  
2 Prisons after entering a plea of guilty to RICO conspiracy and narcotics distribution. Prior  
3 to the imposition of sentence, the Court stated:

4 Under the 3553 factors, the nature and circumstances of the offense are  
5 aggravated. It is really hard to come up with a situation, a drug case,  
6 that can be more aggravated than this one. Certainly this is a gentleman  
7 whose role was significant. He was a leader or organizer. He qualified  
– clearly qualifies for an aggravated role.

8 In addition to significant amounts of dangerous narcotics, the defendant  
9 was involved in a conspiracy to commit murder. It is hard to imagine  
10 what is worse than using violence to engage and further the activities  
of a significant drug trafficking organization.

11 It does appear certainly from the presentence report that this is an  
12 individual who's been involved in the drug business for an extended  
13 period of time. He's approximately 35 years of age. There is really not  
even a real suggestion in the presentence report that he's been involved  
in any legal employment, other than the drug business -- any legal  
employment at all, really in his life.

14 And it does appear that his life really had been dedicated to furthering  
15 the activities of this drug conspiracy or others. He's been involved in it  
16 basically, it looks like, his whole life, and it has been a significant  
17 amount of drugs have been distributed, and they've used threats of  
violence and actual violence in order to further the ends of the drug  
trafficking organization.

18 So it is hard to come up with anything that is a case that would be more  
19 aggravated than this, and certainly this – Mr. Heredia's role is a  
20 significant one, and that is why he qualifies for the aggravated role  
adjustment . . . , he is here because of his participation in a massive drug  
conspiracy that was violent.

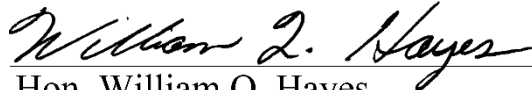
21 The need for the sentence to reflect the seriousness of the offense,  
22 promote respect for the law, and provide just punishment, as the parties  
23 have indicated -- both lawyers have indicated that they have -- they are  
24 recommending a sentence of 360 months in custody, which is a  
25 significant sentence by anybody's definition. It is a recommendation  
that I'll follow. I think it is a reasonable one.

1 (ECF No. 2177 at 13-14). The need for the sentence “to protect the public from further  
2 crimes of the defendant” and “to reflect the seriousness of the offense” under 18 U.S.C.  
3 §3553(a) continues to support the sentence imposed.

4 Defendant does not present evidence to support a medical condition or other  
5 circumstance that would serve as “extraordinary and compelling reasons” for a sentence  
6 reduction under 18 U.S.C. § 3582(c)(1)(A)(i). Defendant has failed to demonstrate factors  
7 set forth in 18 U.S.C. § 3553(a) that would support a reduction in the sentence imposed  
8 taking into account the seriousness of his offense. This Court determined that Defendant  
9 was not eligible for a sentence reduction under 18 U.S.C. § 3582(c)(2) based on admissions  
10 in the plea agreement, and the uncontested facts in the PSR. ECF No. 2420. This order  
11 was affirmed on appellate review. ECF No. 2437. This Court has no further authority to  
12 modify Defendant’s sentence under 18 U.S.C. § 3582(c)(2).

13 IT IS HEREBY ORDERED that the motion for compassionate release and other  
14 equitable relief in the nature of a motion to reopen final judgment pursuant to Federal Rule  
15 of Civil Procedure Rule 60(b)(6) (ECF No. 2484) is denied.

16 Dated: October 1, 2020

17   
18 Hon. William Q. Hayes  
19 United States District Court  
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